

LEGISLATURE OF NEBRASKA
NINETY-SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 46

Introduced by Landis, 46

Read first time January 4, 2001

Committee: Judiciary

A BILL

1 FOR AN ACT relating to civil procedure; to provide a settlement
2 escrow procedure; to state intent; and to provide duties.
3 Be it enacted by the people of the State of Nebraska,

1 Section 1. The Legislature finds that litigation
2 commonly involves large costs for individuals because of resources
3 devoted to discovery, attorney's fees, and the costs associated
4 with uncertainty. Litigation involves large costs for courts
5 because of the increased demand placed upon the time of the courts
6 and the resources required to service that demand. Settlement
7 escrow is an inexpensive, voluntary method designed to reduce delay
8 in pretrial bargaining, thereby lowering costs to both individuals
9 and the courts.

10 Sec. 2. For purposes of sections 1 to 7 of this act:

11 (1) Escrow agent means the Office of Dispute Resolution
12 or the state mediation centers as delegated by the Office of
13 Dispute Resolution; and

14 (2) Point-of-overlap means the midpoint between the
15 settlement offers of a defendant who has offered more than a
16 plaintiff has demanded and the demand of the plaintiff.

17 Sec. 3. (1) Settlement escrow is a one-time, voluntary
18 process by which the parties to an action seek to resolve their
19 dispute. The settlement escrow process may be initiated at any
20 time before trial by either party. The use of a settlement escrow
21 does not preclude the use of any other dispute resolution or
22 settlement process to which the parties may agree.

23 (2) Settlement escrow may be used in civil actions that
24 involve only monetary remedies. Such remedies may include, but are
25 not limited to, damages, court costs, and attorney's fees.

26 (3) If a settlement escrow is conducted and fails to
27 result in a settlement, the parties may not initiate a second
28 settlement escrow for the same action.

1 Sec. 4. Subsequent to the initial filing of a civil
2 action involving only monetary remedies, the parties to an action
3 shall receive from the clerk of the court information regarding
4 settlement escrow. A party to an action wishing to initiate a
5 settlement escrow shall notify the escrow agent in writing. Upon
6 receiving a written request from the initiating party, the escrow
7 agent shall contact the responding party in writing to see whether
8 or not the responding party also wishes to participate. If both
9 parties agree in writing to participate, the escrow agent shall
10 begin the settlement escrow. Failure to agree to initiate a
11 settlement escrow does not preclude an agreement by the parties to
12 initiate a settlement escrow at a later time.

13 Sec. 5. The escrow agent shall solicit settlement offers
14 from the parties on forms created for this purpose by the State
15 Court Administrator's office. The escrow agent shall establish all
16 timeframes within which the settlement escrow occurs so that the
17 use of a settlement escrow does not cause delay in the normal
18 processing of the action. Both parties shall submit settlement
19 offers to the escrow agent. The escrow agent shall then, using a
20 worksheet developed by the office, determine whether or not a
21 point-of-overlap exists. If a point-of-overlap exists, the
22 point-of-overlap becomes the settlement which both parties are
23 required to accept. The escrow agent shall keep all settlement
24 offers confidential; except that for cases in which a
25 point-of-overlap exists, the worksheet shall become part of the
26 court record.

27 Sec. 6. The escrow agent may charge a fee for conducting
28 the settlement escrow. The fee shall be established by the State

1 Court Administrator's office and shall be divided equally between
2 the parties.

3 Sec. 7. The State Court Administrator's office shall
4 create all forms and worksheets used by escrow agents and the
5 information regarding settlement escrow that is distributed by the
6 clerks of the courts. The office shall train all escrow agents on
7 settlement escrow. Escrow agents shall complete settlement escrow
8 training conducted by the office prior to conducting a settlement
9 escrow.